IN THE

Supreme Court of the United States

OCTOBER TERM, 1972.

No. 72-896

ILLINOIS STATE EMPLOYEES UNION, COUNCIL 34, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, AN UNINCORPORATED LABOR ORGANIZATION; ET AL.,

Petitioners,

vs.

JOHN W. LEWIS, INDIVIDUALLY AND AS SECRETARY OF STATE OF THE STATE OF ILLINOIS,

Respondent.

BRIEF IN OPPOSITION TO CERTIORARI.

SUPPLEMENTAL STATEMENT.

Petitioners in this case are the respondents in *Lewis* v. *Illinois State Employees Union, etc., et al.*, No. 72-830, Petition for Certiorari docketed December 6, 1972. In that case the petitioner, John W. Lewis, seeks review of the split decision of the Seventh Circuit that political patronage dismissals of non-civil service government employees violate the First Amendment. The instant petition seeks review of the unanimous holding of the Seventh Circuit in the same case that such employees were

not entitled to notice and hearing under the Fourteenth Amendment prior to their dismissals; this holding was based upon the ruling of this Court in *Board of Regents* v. *Roth*, 408 U. S. 564 (1972). The court below specifically found that no stigma attached to petitioners' reputations as a result of their discharges (footnote 1 in Judge Stevens' opinion):

> "We assume that the loss of a patronage job would in no sense reflect adversely on the discharged employee's reputation. And here, of course, no charges of misconduct were made—the discharges were made without any reasons being given."

Under these circumstances, the Seventh Circuit held (footnote 1 in Judge Stevens' opinion):

> "[T]he Supreme Court's opinion in *Roth* requires that we reject the 'notice and hearing' aspect of plaintiffs' claim."

QUESTION PRESENTED.

Whether non-civil service government employees may be dismissed without prior notice and hearing.

REASONS FOR DENYING THE WRIT.

This Court held in *Board of Regents* v. *Roth*, 408 U. S. 564 (1972), that a non-tenured teacher had no Fourteenth Amendment "liberty" or "property" right to continued employment and was, thus, not entitled to pretermination notice and hearing. We submit that the Court below correctly applied *Roth* in holding that petitioners, who held non-civil service jobs in the Illinois Secretary of State's office as building employees, clerical workers, and license examiners, could be dismissed without prior notice and hearing.

Petitioners argue that the decision below extends *Roth* and conflicts with its companion decision of *Perry* v. *Sindermann*, 408 U. S. 593 (1972). The argument, we submit, is patently frivolous. *Sindermann* held only that prior notice and hearing were required where a *de facto* tenure system, based upon official university pronouncements and publications, created a reasonable expectation of continued employment. (408 U. S. 600-01.) However, this Court also reaffirmed its holding in *Roth* that a mere "subjective expectancy" is not protected by due process. (408 U. S. at 603.) Thus, the Court declared (408 U. S. at 599):

> "As in *Roth*, the mere showing that [the teacher] was not rehired in one particular job, without more, did not amount to a showing of a loss of liberty. Nor did it amount to a showing of a loss of property."

Petitioners cannot cite any statutes, publications, or official pronouncements that in any way state or imply that petitioners had any right to continued employment in the Secretary of State's office. Nor can petitioners claim any "subjective expectancy" of continued employment. As the court below stated (footnote 1 in Judge Stevens' opinion):

> "One who takes a 'patronage' job may not even have an expectancy of keeping it when the appointing officer is replaced, let alone a 'legitimate claim of entitlement' to such a job."

Sindermann obviously does not require prior notice and hearing under such circumstances.

The two lower court cases cited by petitioners, *Mims* v. *Board of Education*, ... F. 2d ..... (Docket No. 72-1007, November 10, 1972), and *Kennedy* v. *Sanchez*, ... F. Supp. ....., 41 L. W. 2261 (N. D. Ill., October 24, 1972), do not display any doubt or confusion concerning the application of either *Roth* or *Sindermann*. Both *Mims* and *Kennedy*

involved *civil service* employees who had a vested right to, and expectancy of, continued employment. The facts of the instant case are precisely the opposite, and *Mims* and *Kennedy* thus have no conceivable bearing.

In sum, there is no confusion concerning this Court's decisions in *Roth* and *Sindermann,* there is no conflict among circuits, and there is no other reason to grant certiorari.

CONCLUSION.

For the foregoing reasons, we submit the petition should be denied.

Respectfully submitted,

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January 16, 1973.